

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION	:	Master File No. 12-md-02311
	:	Honorable Marianne O. Battani
ALL PARTS	:	
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THIS DOCUMENT RELATES TO:	:	
ALL ACTIONS	:	
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**RESPONDING DEFENDANTS' RESPONSE TO END-PAYOR
PLAINTIFFS' OBJECTIONS TO MASTER'S ORDER REGARDING
MOTION TO MODIFY STIPULATED ORDER OF DISCOVERY**

The undersigned Defendants respectfully request the Court overrule the objections by end-payor plaintiffs (“EPPs”) to the Master’s October 8, 2014 Order (the “Order” or “Master’s Order”) on EPPs’ motion to modify the Stipulated Order of Discovery of December 23, 2013 (Dkt. 664) (the “DOJ Discovery Stay” or “the Stay”), as modified by the Court’s Order of June 25, 2014 (Dkt. 750). The Master’s Order granted EPPs’ request to serve an interrogatory upon defendants seeking identification of the makes and models for the motor vehicles whose parts were included in guilty pleas negotiated with the DOJ, but sensibly limited the relief to cases “where discovery is underway,” and further ruled that “Defendants

retain whatever rights they may have to object to the requested discovery in their particular cases.” Dkt. 835.

The EPPs seek to drastically expand the Order by requiring *all* defendants that have pleaded guilty or agreed to plead guilty in the context of a DOJ investigation to “substantively respond” to the interrogatory. Dkt. 837 at 1-2. Thus, while styled as a request to “modify” the DOJ Discovery Stay, the EPPs’ proposed order goes much further: It seeks to accelerate discovery in all “cases that are presently or become part” of this MDL, to strip defendants of their right to object to such discovery, and to deprive many defendants of the benefit of negotiated agreements with EPPs to stay proceedings pending filing of amended complaints. Dkt. 837-2 at 1. EPPs’ proposed modification to the Master’s Order should be overruled for the following reasons:

First, the Master’s ruling is consistent with the existing DOJ Discovery Stay adopted by the Court. The Stay requires that any discovery “be conducted in accordance with the case management order and discovery schedule applicable to the particular case.” Dkt. 664 at 5 (emphasis added). Moreover, it “does not foreclose any party from objecting on any grounds available to it under the Federal Rules of Civil Procedure . . . or supersede any other stay of or limitation on discovery that may be imposed in any existing or subsequent case

management order or discovery schedule” *Id.*¹ EPPs’ proposed order, in contrast, would not only authorize EPPs to prematurely serve their proposed interrogatory in cases in which a discovery schedule has neither been negotiated among the parties nor entered by the Court, but also preclude defendants from interposing any valid objections in response.

Second, the Master’s Order recognizes that the various product cases in this MDL are differently situated, by design of the parties and the Court and by virtue of the nature of EPPs’ allegations. Motions to dismiss have not yet been briefed, let alone decided, in many cases. In others, proceedings are effectively stayed by agreement of the parties (including EPPs) pending the filing of amended complaints.² And within particular cases, not all defendants are in the same

¹ The undersigned defendants also opposed EPPs’ original motion to modify the DOJ Discovery Stay “[t]o the extent that the [EPPs] . . . seek a blanket order authorizing service of the proposed interrogatory in all product cases and requiring Defendants in all product cases to respond to the proposed interrogatory” and “reserve[d] – as the DOJ Discovery Stay already contemplates – any other objections that may be available to them in their respective cases . . . as well as objections addressed to the specific substance of the [EPPs’] request.” Dkt. 804 at 1-2.

² Defendants in many actions waived service or agreed to accept service in exchange for EPPs agreeing to stay the proceedings pending the filing of an amended consolidated complaint. *See, e.g.*, Stipulation and Order Regarding Accepting Service of Complaints and Extension of Time, *Barron v. Koito Mfg. Co., Ltd.*, No. 2:13-cv-12483-MOB-MKM (E.D. Mich. Nov. 21, 2013), ECF No. 7; Stipulation and Order Regarding Accepting Service of Complaints and Extension of Time, *Adams v. Diamond Electric Mfg. Co.*

position: some have not been properly served, and some might have legitimate jurisdictional defenses that have not yet been addressed through a motion to dismiss. EPPs' proposal for across-the-board discovery is thus unworkable as a procedural matter. EPPs—who have unquestionably benefitted from stipulated delays in later-filed cases—should not be permitted to prematurely demand discovery in cases where motions to dismiss have not yet been resolved solely because of EPPs' unfounded prediction that such motions, even those that have yet to be filed, will be unsuccessful. *See* Dkt. 837 at 3.

Third, the Master's ruling is consistent with the Court's management of the MDL to date. During his September 16, 2014 conference with the parties, the Master explained his understanding of the Court's preference that discovery in later-filed cases begin after the motion to dismiss phase. Moreover, the Court has previously recognized how differently the cases and defendants are postured—not just procedurally, but factually. At the most recent status conference held on October 8, 2014, the Court emphasized that neither EPPs nor any other plaintiff groups in this MDL have alleged a single, overarching conspiracy across auto parts and suppliers. *See* Hr. Tr. at 28, 80.³ The Court therefore ordered the parties only

³ *Ltd.*, No. 2:13-cv-14173-MOB-MKM (E.D. Mich. Nov. 13, 2013), ECF No. 7.

Many defendants in later-filed cases are named only in one or two product cases. By way of example, Diamond Electric Mfg. Co., Ltd. and its U.S.

in the *Wire Harness* cases, which are most advanced, to proceed with a deposition protocol and class certification schedule. EPPs fail to explain how serving their proposed interrogatory *now* in all MDL cases will aid the Court and parties in coordinating discovery and class certification, which are already moving forward in earlier-filed cases. Nothing in the Master’s Order forecloses EPPs from serving the proposed interrogatory in later-filed cases at the appropriate juncture.

Finally, the Court should adopt the Master’s ruling that “all Defendants retain whatever rights they may have to object to the requested discovery in their particular cases.” Dkt. 835. EPPs’ request that the Court order defendants to “substantively respond” to their proposed interrogatory seeks to preclude defendants from asserting objections—an unreasonable and prejudicial shortcut of the usual discovery process. Indeed, whether or not the Court concludes that now is the appropriate time for EPPs to serve their interrogatory on all defendants in all cases, EPPs have made no showing that defendants should be unilaterally deprived of their rights under the Federal Rules of Civil Procedure to assert objections based on timing, form, substance, or other particularized grounds, as with all other discovery. Defendants have a fundamental right to object to

subsidiary are defendants solely in *Ignition Coils*, where EPPs have yet to file an amended consolidated complaint. *See In re Ignition Coils*, No. 2:13-cv-01403 (E.D. Mich.); *Adams v. Diamond Electric Mfg. Co., Ltd.*, No. 2:13-cv-14173-MOB-MKM (E.D. Mich.).

discovery, and EPPs cannot steamroll that right with vague and unfounded assertions of delay and inefficient case management.

Wherefore, the undersigned defendants respectfully request that this Court overrule EPPs' objections to, and adopt, the Master's Order of October 8, 2014.

Dated: October 27, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Matthew J. Reilly, hereby certify that on October 27, 2014, I electronically filed the foregoing Responding Defendants' Response to End-Payor Plaintiffs' Objections to Master's Order Regarding Motion to Modify Stipulated Order of Discovery with the Clerk of the Court using the ECF system, which will send electronic notification to all counsel of record.

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